

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 11-1422 (DSD/JJG)

Terrance Alfonso Dudley,
Plaintiff,

v.

ORDER

Warden Jessica Symmes,
Defendant.

This matter is before the court upon the motion for a certificate of appealability (COA) by plaintiff Terrance Alfonso Dudley. Based on a review of the file, record and proceedings herein, and for the following reasons, the court denies the motion.

Dudley filed a habeas petition on June 1, 2011. Defendant Jessica Symmes filed a motion to dismiss on June 3, 2011. Both parties submitted memoranda and the motion was taken under advisement. Thereafter, Dudley notified the court in a letter dated November 8, 2011, that he had "been moved to Stillwater prison." ECF No. 11. On January 5, 2012, Magistrate Judge Jeanne J. Graham recommended that Dudley's petition be denied and that the court grant Symmes's motion to dismiss. Dudley did not object, and the court adopted the magistrate's report and recommendation on January 26, 2012. A copy of the judgment was mailed to Stillwater Correctional Facility, 5329 Osgood Ave N., Stillwater, Minnesota 55082, but was returned as undeliverable. See ECF No. 15.

On August 20, 2012, Dudley notified the court of a subsequent change of address and requested an update regarding the progress of his habeas petition. See ECF No. 16. In response, a copy of the court's January 26, 2012, order was mailed to Dudley's updated address. Thereafter, Dudley filed a notice of appeal to the Eighth Circuit. Dudley also filed a COA in this court.

To warrant a COA, a petitioner must make a "substantial showing of the denial of a constitutional right" as required by 28 U.S.C. § 2253(c)(2). A "substantial showing" requires a petitioner to establish that reasonable jurists would find the court's assessment of the constitutional claims "debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

Setting aside the issue of timeliness,¹ a COA is not warranted. As the magistrate judge correctly explained, claims one through three were not presented to the Minnesota Supreme Court on direct appeal, and claims four through six were not presented to the state court until postconviction review or are meritless. Moreover, Dudley presents no new arguments in his motion for COA. Indeed, Dudley has not demonstrated that reasonable jurists would determine that the court's assessment of the constitutional claims are "debatable or wrong." Therefore, a COA is not warranted. Accordingly, based on the above, **IT IS HEREBY ORDERED** that

¹ It appears that Dudley's appeal is untimely. The court need not determine whether equitable tolling applies because Dudley's COA request fails on the merits.

plaintiff's motion for a certificate of appealability [ECF No. 25]
is denied.

Dated January 28, 2013

s/David S. Doty
David S. Doty, Judge
United States District Court